

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.10524/2009**

% **Date of Decision: 30.07.2009**

Himalaya College of Education Petitioner
Through Mr.Sanjay Sharawat, Advocate.

Versus

National Council for Teacher Education and others Respondents
Through Mr.V.K. Rao, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (ORAL)

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The petitioner has impugned in this petition the order dated 27th July, 2009 of National Council for Teacher Education remanding back the matter of the petitioner to the NRC for issue of a revised order stipulating withdrawal of conditional recognition accorded to the petitioner being effective from the academic Session 2009-2010 in the NRC's order dated 9th June 2009.

In the appeal bearing F.No.89-473/2009-Appeal, the petitioner had impugned order dated 9th June, 2009 of the Northern Regional

Committee withdrawing conditional recognition of the petitioner for conducting B.Ed. course on the ground that the petitioner had not furnished the list of faculties selected by duly constituted selection committee as per NCTE norms, for employing a teacher on contract basis for admitting the students without obtaining recognition.

The petitioner, which is an unaided self-financing institution, had been accorded conditional approval for B.Ed course by communication dated 27th August, 2006 by Northern Regional Committee (NRC) of NCTE, conditional recognition subject to appointment of staff by a duly constituted selection committee with requisite qualification as per norms and standards of NCTE and affiliating university. For grant of unconditional recognition the petitioner had to send the signed copy of the minutes along with affidavit within 21 days.

The petitioner had also applied for additional intake in December 2006. In response to the request of the petitioner, the respondent had demanded removal of deficiencies pointed out and for fulfilling the conditions imposed for grant of conditional recognition by letter dated 27th August, 2006.

On account of non-compliance of the terms of the conditional recognition, Northern Regional Committee had withdrawn the conditional recognition by order dated 9th June, 2009 on the ground that the list of faculty selected by a duly constituted selection committee as per NCTE norms was not submitted and a teacher was appointed on contract basis. While withdrawing the conditional recognition, it was also noticed that though the petitioner was liable to make admission of students only after obtaining unconditional recognition from the Northern Regional Committee and affiliation from the examining body, however, without getting unconditional recognition but on the basis of obtaining affiliation from the affiliating university, the petitioner admitted students for academic session 2006-2007 onward.

Learned counsel for the petitioner, Mr.Sanjay Sharawat, has very emphatically contended that an affidavit dated 15th March, 2007 in compliance of the requirement of conditional recognition was sent. This fact is not admitted by the respondent. Even before the Appellate Authority on checking the record of Northern Regional Committee, it had transpired that the said affidavit was not on the record. Learned counsel for the petitioner has contended that the affidavit was sent along with a letter dated 15th March, 2007 and reliance has been placed

on a photocopy of the letter dated 15th March, 2007 and a photocopy of the postal receipt dated 20th March, 2007. In view of the specific denial by the respondent that the said affidavit was received by the respondent, merely on the basis of a postal receipt it cannot be presumed that the letter dated 15th March, 2007 was received by the respondent. The presumption of the service of registered article under the relevant provisions of General Clauses Act had been rebutted and the petitioner has failed to prove the receipt of the said letter and the alleged affidavit. If the article was sent by the registered post, the petitioner ought to have obtained an appropriate certificate about the delivery of said article from the concerned postal authority. Merely on the basis of postal receipt of the letter, it cannot be held that the registered letter was delivered as the same has been denied by the respondent.

Learned counsel for the petitioner has also relied on a communication No.AAN03919 dated 23rd May, 2008 of the respondent to contend that the affidavit in compliance was received by the respondent. The said communication pertains to compliance of the formalities for additional intake sought by the petitioner in December 2006. Learned counsel for the petitioner has contended that since LOI (Letter of Intent) was issued to the petitioner, therefore, it is apparent

that the requirements for conditional recognition had been fulfilled. The plea of the counsel for the petitioner is not acceptable as pursuant to letter of intent (LOI) issued by the respondent, the inspection had to be carried out in respect of additional intake requested by the petitioner in December 2006, however, from issuance of LOI for additional intake, it has not be demonstrated by the petitioner that the conditions for the conditional recognition had been fulfilled. By the said letter LOI (letter of intent) was issued for additional intake and from the fact that LOI was issued for additional intake, in cannot be inferred that the conditions for grant of conditional recognition were complied with. Rather the communication dated 23rd March, 2008 reiterated compliance of conditional requirement subject to which conditional recognition was granted. Consequently, on the basis of the said communication, it cannot be inferred that the respondent had received the documents in compliance of the conditions imposed while granting conditional recognition.

Learned counsel for the petitioner has, thereafter, contended that the affidavit in compliance was again sent by letter dated 21st June, 2007 and has filed a copy of the alleged affidavit dated 1st June, 2007. Perusal of the copy of the affidavit reveals that it is neither notarized nor attested by Oath Commissioner except bearing a special adhesive

stamp. The said document cannot be construed to be an affidavit in compliance with the conditional requirement for conditional recognition. Learned counsel for the respondent has also produced yet another copy of the affidavit dated 23rd June, 2008, a copy of which was allegedly sent to the counsel for the respondent by fax on 14th July, 2009. The said affidavit is also neither notarized nor attested by Oath Commissioner and cannot be construed as an affidavit in compliance with the requirement of the respondent.

In the circumstances, the finding of the Appellate Authority that the petitioner did not comply with the conditional requirement for grant of conditional recognition cannot be faulted.

The appeal of the petitioner has also been rejected on the ground that the petitioner was entitled to admit students only after getting unconditional recognition whereas the petitioner started admitting the students from the academic session 2006-2007 onward without having unconditional recognition. This is not disputed by the learned counsel for the petitioner that unconditional recognition was not granted to the petitioner. Learned counsel for the petitioner is also unable to show any provision which would have entitled the petitioner to admit the students despite the petitioner not having unconditional recognition.

The petitioner is also unable to explain his right to admit students only on account of grant of conditional recognition by the respondent.

In the circumstances, the grounds on which the appeal of the petitioner has been rejected cannot be faulted nor the petitioner has been able to show any such grounds which would entitle him for interference by this court. The Appellate Authority has remanded the matter to the Northern Regional Committee for passing a revised order withdrawing conditional recognition from the academic session 2009-2010. If the order withdrawing conditional recognition cannot be faulted, the decision of the Appellate Authority to pass a revised order specifying that the conditional recognition has been withdrawn for the academic session 2009-2010 and directing the NRC to pass an appropriate order, also does not suffer from any such illegality which will require interference by this Court in exercise of its power under Article 226 of the Constitution of India.

The writ petition is, therefore, without any merit and it is dismissed.

July 30, 2009
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ANIL KUMAR, J.